

NOT INCLUDED  
IN BOUND VOLUMES

MJS  
Corona, CA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

UHS-CORONA, INC. d/b/a CORONA  
REGIONAL MEDICAL CENTER

Employer

and

Case 21-RC-094258

UNITED NURSES ASSOCIATIONS OF  
CALIFORNIA/UNION OF HEALTHCARE  
PROFESSIONALS

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held January 3 and 4, 2013, and the administrative law judge's decision recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 155 for and 116 against the Petitioner, with 5 void ballots and 3 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings<sup>1</sup> and recommendations<sup>2</sup> as modified below, and finds that a certification of representative should be issued.

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<sup>1</sup> The judge was sitting as a hearing officer in this representation proceeding. The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect.

Most of the Employer's objections involve alleged conduct by physicians who practice at the Corona Regional Medical Center but are not employees of the Employer. Notwithstanding the physicians' nonemployee status, the Employer contends that the physicians are managers, statutory supervisors, and/or agents of the Employer and engaged in objectionable prounion conduct.

For the reasons set forth in the hearing officer's decision, we adopt her finding that physicians are not the Employer's managers. We also adopt her finding that they are not statutory supervisors, with the following modification. Although the hearing officer correctly rejected the Employer's argument in this regard on the basis that the physicians are not employees of the Employer, she found that the physicians responsibly direct unit nurses in providing medical care. We find that, even if the physicians were the Employer's employees, the Employer did not meet its burden of showing that they have the authority to responsibly direct nurses. Direction of employees is responsible when "the person directing and performing the oversight of the employee [is] accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly." *Oakwood Healthcare, Inc.*, 348 NLRB 686, 692 (2006). There is no evidence in the record that doctors are

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*Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> In the absence of exceptions, we adopt the hearing officer's recommendations to overrule Objections 11, 16, 17, 20, 21, and 22. Although the Employer excepted to her recommendation to overrule Objection 7 and to her finding that the physicians' conduct was not objectionable under the third-party standard, these exceptions are bare and unsupported by argument. Accordingly, we find, pursuant to Sec. 102.46(b)(2) of the Board's Rules and Regulations, that these exceptions should be disregarded. See, e.g., *New Concept Solutions, LLC*, 349 NLRB 1136, 1136 fn. 2 (2007).

considered “accountable” for the performance of nurses for purposes of Section 2(11) of the Act. We adopt the hearing officer’s finding that the physicians possess no other indicia of supervisory authority, and we find that they would not be supervisors under Section 2(11) even if they were employed by the Employer.

Contrary to the Employer, we also find that the physicians are not the Employer’s agents because the record does not establish that they were acting with apparent authority on behalf of the Employer when they engaged in prounion activity. Apparent authority arises from a manifestation by the principal to a third party that creates a reasonable belief that the principal has authorized the alleged agent to perform the acts in question. See, e.g., *Pan-Oston Co.*, 336 NLRB 305, 305-306 (2001). The test is whether, under all of the circumstances, employees would reasonably believe that the physicians were speaking and acting for management when they engaged in the conduct the Employer alleged as objectionable, such as advocating for the Union or expressing prounion views. *Id.* at 306. The Employer introduced no evidence that might possibly support such a belief, especially given the Employer’s open and public *antiunion* campaign.<sup>3</sup> The evidence it does cite – e.g., Dr. Koning’s appearance at an awards reception honoring the Employer, his posing for a picture of the award alongside some of the Employer’s managers, and his appearing on a Corona newsletter cover story – has nothing to do with labor relations issues, even assuming that unit employees knew about those events. The Employer does not cite, and we have not found, precedent supporting the proposition that attending an awards reception or appearing in

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<sup>3</sup> The Employer does not contend that it actually authorized any physician to act on its behalf within the general area of labor relations matters, or that it has held out any physician to its employees as authorized to represent it within that sphere.

a newsletter article in the above-mentioned context would cause employees to reasonably believe that Dr. Koning—who, again, was not even employed by the Employer—spoke or acted for the Employer regarding labor relations matters.

Having found that the Employer has not established that its physicians are its agents, supervisors, or managers, we find it unnecessary to reach whether their conduct would be objectionable under *Harborside Healthcare, Inc.*, 343 NLRB 906 (2004). For the reasons stated by the judge, we reject the Employer's remaining objections in their entirety.

#### CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for United Nurses Associations of California/Union of Healthcare Professionals, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

**Included:** All full-time and regular part-time and per diem Registered Nurse-ICU; Registered Nurse-PCU; Registered Nurse-ER; Registered Nurse-OP/SS Surgery; Registered Nurse-Recovery; Registered Nurse-Surgery/OR; Registered Nurse-Surgical; Registered Nurse-Special/Specialty Nurse; Registered Nurse-L&D; Registered Nurse-Nursery; Registered Nurse-OB/GYN Nursing; Registered Nurse-PEDS; Registered Nurse-Lactation Consultant; Registered Nurse-Infusion Therapy; Registered Nurse-Medical; Registered Nurse-PHP; Registered Nurse-Psych; Registered Nurse-Home Health; Registered Nurse-Skilled Nursing Unit; Registered Nurse-cardiac Cath Lab; Registered Nurse-Hospice; and Registered Nurse-Special Procedure employed by the Employer at its 800 South Main Street, 730 Magnolia Avenue, and 760 Washburn Avenue, Corona, California facilities. **Excluded:** All other employees, agency employees; Registered Nurse Home Health Coordinator; Registered Nurse Case Manager; Performance Improvement Coordinator/Core Measure; Quality Assurance Coordinator; Quality Coordinator; Wound Care Coordinator/RN Wound Care Enterostomal; Quality Improvement Nurse/UR Coordinator; MCS Coordinator/RN; Operating Room Clinical Educator/Nurse Educator; Care Partner; Community Liaison; Infection Control Nurse; Risk Analyst/Risk Management Analyst; Clinical Systems Analyst; RN Clinical Specialist; Assistant Director-Surgical Services; Director-Infection

Prevention; Director-Education; Interim Director – ICU; Director – ICU; Manager – Nursing; Director – Emergency Room; Interim Director OR/Recovery/OPS; Director – Quality Management; Director Women’s Health Center/Services; Director – Med/Surg/Telemetry/PCU; Director – Risk Management; Director – Nursing; Rehab Hospital Administrator; Director – Psych Services; Director-Home Health; Director-Rehab/Therapy Services; Director-Case Management; Director-Diagnostic Imaging; Director-Information Systems; Charge Nurses; Lead House Supervisors; House Supervisors; office clerical and administrative employees; confidential employees; other professional employees; guards and supervisors as defined in the Act.

Dated, Washington, D.C., June 17, 2014

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Philip A. Miscimarra,	Member
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Harry I. Johnson, III,	Member
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Nancy Schiffer,	Member
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(SEAL)

NATIONAL LABOR RELATIONS BOARD